MCI Communications
Corporation

1801 Pennsylvania Avenue, NW
Washington, DC 20006

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FEDERAL COMMUNICATIONS COMMISSION
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January 3, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket 96-237

Dear Mr. Caton:

Enclosed herewith for filing are the original and six (6) copies of MCI Telecommunications Corporation's Comments regarding the above-captioned matter. Pursuant to the Commission's request, MCI is also submitting by separate cover a 3.5 inch diskette using MS DOS 5.0 and WordPerfect 5.1 software, containing our enclosed comments.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Lawrence Fenster

cc: ITS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Implementation of Infrastructure	)	**CC Docket No. 96-237**
Sharing Provisions in the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Lawrence Fenster
MCI Telecommunications Corp.
1801 Pennsylvania Ave., NW
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January 3, 1997

SUMMARY

Section 259 can realize Congress' desire of promoting universal service only if the qualifying LEC has the ability to gain access to incumbent LEC facilities, over-and-above its ability to do so under Section 251. Congress believed that the competition induced by Section 251 would promote greater availability and quality of telecommunications services. By granting LECs qualifying under Section 259 at least the same access to incumbent LEC facilities, resources, and information they would be able to obtain under Section 251, the benefits of competition will be carried over to areas where competition has yet to develop. In particular:

* Sections 251/252 and 259 differ primarily in the means by which they seek to achieve the same policy goal of promoting technological and service development. So long as qualifying LECs do not use providing LEC services or facilities to compete against the qualifying LEC, there is no limitation on whether a carrier utilizes Section 251/2, Section 259, or a combination.

* Agreements made pursuant to Section 252 will provide clear guidelines regarding prices, terms and conditions, limiting the extent of disagreement among qualifying LECs and providing LECs, thereby promoting cooperation.

* The Commission is within its authority to make terms and conditions negotiated pursuant to Sections 252 of the 1996 Act available as standards governing Section 259 agreements. Doing so is consistent with Section 252(i) which makes existing interconnection agreements available to all carriers whether or not they negotiate an agreement under Section 252.

* Providing LECs may deny qualifying LEC requests as economically unreasonable only if the providing LEC would have to provide access at prices lower than those consistent with the costing principles established in the First Report and Order in CC Docket 96-98.

* The pricing principles established in the Commission's First Report and Order in CC Docket 96-98 provide the guidelines that permit qualifying LECs to fully benefit from providing LEC's scale and scope economies.

TABLE OF CONTENTS

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I. Introduction

MCI Telecommunications Corporation ("MCI") respectfully submits its reply comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned docket[1]. In response to its Notice, the Commission received comments from 20 parties representing the major interests affected by this Section of the Telecommunications Act of 1996 (1996 Act). These parties include: larger incumbent local exchange companies (LECs); smaller, rural LECs; potential local exchange entrants; and state regulators. The Commission's Notice raised numerous questions pertaining to each sub-section of Section 259 of the 1996 Act. After assessing initial comments, MCI has identified 4 issues to which it wishes to reply: (1) the relation of Section 251 to Section 259 of the 1996 Act; (2) the services and/or facilities covered under Section 259; (3) the meaning of the term economically unreasonable; and (4) the measurement of benefits to which a qualifying carrier is entitled under Section 259.

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[1] In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket 96-237, FCC No. 96-456, released November 22, 1996.

II. Section 251 Should Serve as a Baseline for Section 259 Agreements

As might be expected, differences of viewpoint on most issues divide into those that are most likely to be providing local exchange carriers and those that are most likely to be qualifying local exchange carriers. By and large, the large incumbent LECs (RBOCs, GTE, and Sprint) expect to be providing LECs and smaller incumbent LECs and potential entrants expect to be qualifying LECs.

A. Separation of Sections 251 and 259 Is Rendered Practically Impossible by the 1996 Act

Providing LECs generally argue that there is no relation between Section 251 and Section 259. USTA argues that "Sections 251 and 259 were enacted for entirely different purposes...The providing LEC's obligation to negotiate a sharing agreement under Section 259 is independent of whether the requested capability, or a variation thereof, is also available as an unbundled network element under Section 251."[2] Ameritech goes so far as to argue that non-competing carriers may not avail themselves of Section 251, and "...are compelled to obtain shared infrastructure under Section 259."[3]

It is not correct, as USTA argues, that Sections 251 and 259 were enacted for different purposes. Section 251 was intended to promote technological and service development by fostering competition for local telephone services. Section 259 was intended to promote technological and service development by requiring incumbent LECs to share the benefits of technological and service improvement in hard-to-serve areas. Sections 251 and 259 differ in the

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[2] USTA Comments at 6. See also Comments of: Pacific at iv; BellSouth at 4; GTE at 9; NYNEX at 5;

[3] Ameritech Comments at 4.

means by which they seek to achieve the same policy goal. Consequently, if competition promotes technological and service development, these benefits should be made available to LECs qualifying under Section 259. So long as the qualifying LEC does not use providing LEC services or facilities to compete against the qualifying LEC there is no limitation on whether a carrier utilizes Section 252, Section 259, or a combination of the two.[4]

More importantly, Section 252(i) of the 1996 Act requires incumbent LECs to "...make available any interconnection service, or network element provided under an agreement approved under this section ...to any other requesting telecommunications carrier upon the same terms and conditions..." Thus, a providing LEC must offer a Section 259-qualifying LEC the same terms and conditions to which it agreed under Section 252, whether or not the qualifying LEC negotiates an agreement under Section 252. Since any carrier may automatically obtain the terms and conditions equal to any existing 252 agreement, there is no reason for it to enter into negotiations under Section 259 unless it is able to receive more favorable terms and conditions. The Commission should implement its Section 259 rules so as to ensure this outcome.

B. The Commission must Ensure That Implementation of Section 259 Does Not Inhibit Competition

A number of parties have identified conditions under which the ability of a qualifying LEC to obtain a Section 259 agreement might limit or inhibit competition. NCTA asks the Commission to require qualifying LECs to make the facilities and services they obtain from a providing LEC under Section 259 available to carriers negotiating Section 251 agreements with

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[4] See ALTS Comments at 4.

them.[5] Otherwise, carriers hoping to compete with the qualifying LEC would be placed at a competitive disadvantage. Qualifying LECs should be required to make all of their services and facilities available to a competing carrier under Section 251, so long as the competing carrier confines its competitive activities to the qualifying LEC, and does not use these shared services or facilities to compete against the providing LEC.

MCI identified another way in which Section 259 could inhibit competition. If the Commission interpreted the prohibition on using qualifying LEC facilities in Section 259(b)(6) as an absolute prohibition, the qualifying LEC could suspend 259 agreements simply by choosing to compete with the qualifying LEC in part of the qualifying LEC's service territory.[6] The Commission should retain the of competitive action by either the incumbent or the qualifying LEC. If a providing LEC enters the territory of a qualifying LEC with which it has a 259 agreement, it should be required to continue to honor the terms of that agreement. Conversely, if a LEC that has a 259 agreement with an incumbent LEC enters the service territory of the incumbent, it should be required to bring the terms of its agreement into alignment with the terms of a 251 agreement.

II. The Commission Should Broadly Interpret the Facilities and Services providing LECs must Make Available under Section 259.

Incumbent LECs propose limiting the scope of services and facilities they must make available to a qualifying LEC. They argue that the plain language of Section 259 limits sharing

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[5] NCTA Comments at 5.

[6] MCI Comments at 10.

requests to public switched infrastructure, and does not include services.[7] There is one sense in which the incumbents LECs are correct. As Pacific points out in its comments, if the services the qualifying LEC desires can only be obtained by transferring a providing LEC customer to a qualifying LEC customer, then the limitations imposed by Section 259(b)(6) will permit the providing LEC to deny such a request.[8]

However, qualifying LEC access to a variety of services to which the providing LEC has access, does not necessarily involve a transfer of customers from the providing LEC to the qualifying LEC. An important class of services fitting this situation is information services. A qualifying LEC may use a providing LEC information service, combine it with qualifying LEC facilities, to offer an information service solely to customers in its service territory, without competing with the qualifying LEC. Similarly, any service used by the providing LEC in the provision of telecommunications or information services, either provided by itself, an affiliate, or an independent contractor can be made available to a qualifying LEC without the providing LEC losing any customers. The Commission should require providing LECs to make such services available to qualifying LECs.

III. Requests for New Facilities are Not A Priori Unreasonable

Section 259(b)(1) prohibits the Commission from adopting regulations implementing Section 259 that would require a providing LEC to take an economically unreasonable action. In its Notice, the Commission tentatively concluded that "...for a sharing request to be considered

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[7] See Comments of: USTA at 5; Southwestern Bell at 4; Pacific at 8; GTE at 4; BellSouth at 10;

[8] Pacific Comments at 8.

'economically unreasonable,' the terms proposed by the qualifying carrier must be such that the providing incumbent LEC would incur costs that it could not recover."[9] So long as the qualifying LEC offers terms of compensation for a request for a new facility that permit the providing LEC to recover its costs, there is no legal basis on which providing LECs may justifiably deny their request.

IV. Enabling Qualifying LECs to Fully Benefit from Providing LEC Economies Requires Adopting Incremental Pricing Guidelines

Section 259(b)(4) requires providing LECs to provide their infrastructure to qualifying LECs on "...terms and conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope." In their comments, incumbent LECs propose watering the benefit to qualifying LECs down in various ways that would deny qualifying LECs the full benefit of providing LEC economies. For example, USTA suggests that qualifying LECs will reap the full benefits of Providing LEC economies if qualifying LECs pay the average embedded cost of a providing LEC facility, including a share of the providing LEC's common costs. USTA suggests that the qualifying LEC would "fully benefit" from the providing LEC's economies as long as this price is less than the average embedded cost of the qualifying LEC.[10]

This proposal is not supported by accepted economic thinking. In order for the qualifying LEC to fully benefit from the providing LEC's scale and scope economies, it must receive a price no higher than average incremental cost of the providing LEC. This cost would exclude any attribution of common costs. Other ILEC attempts to water down the "fully benefit" language of

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[9] Notice at 11.

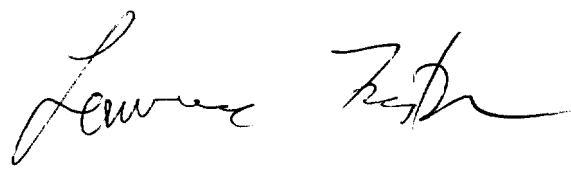
[10] USTA Comments at 19-20.

Section 259(b)(4) should also be rejected. For example, Southwestern Bell suggests including the opportunity costs of engaging in infrastructure sharing, apparently forgetting its own insistence that there should be no competition between qualifying LECs and providing LECs.[11]

V. Conclusion

For the above-mentioned reasons, MCI encourages the Commission to adopt the tentative conclusions that it proposes in the Notice, and to adopt the proposals suggested by MCI herein.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION



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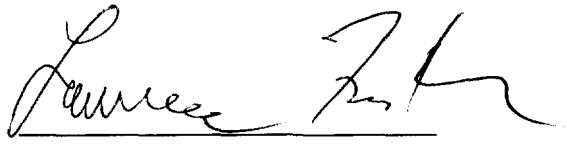
January 3, 1997

[11] Southwestern Bell Comments at 13.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on January 3, 1997



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CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify that a copy of the foregoing **Reply Comments** has been sent by United States first class mail, postage prepaid, hand delivery, to the following parties on this 3rd day of January, 1996.

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